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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/796,708	03/09/2004	Gary Lee Knirk	60,137-242; 118-3004-U	2929
26096	7590	09/02/2005		
CARLSON, GASKEY & OLDS, P.C. 400 WEST MAPLE ROAD SUITE 350 BIRMINGHAM, MI 48009			EXAMINER HUYNH, KHOA D	
			ART UNIT 3751	PAPER NUMBER

DATE MAILED: 09/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

### Office Action Summary

<b>Application No.</b>	<b>Applicant(s)</b>	
10/796,708	KNIRK ET AL.	
<b>Examiner</b>	<b>Art Unit</b>	
Khoa D. Huynh	3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 10 June 2005.  
 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1, 4 and 5 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 4 and 5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Drawings*

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "at least three of said tabs each including holes" as recited in claim 5 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1, 4 and 5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, the recitation "said holes" lack antecedent basis. Claim 4 depends on claim 1 and is likewise indefinite.

Regarding claim 5, it is unclear what structure limitations applicant intends to cover when claim 5 calls for "said at least three of said tabs each including holes". As best understood from the specification, each of the tabs has a hole for receiving a fastener. Therefore, the recitation "said at least three of said tabs each including holes" render the claim indefinite since the mete and bound of such claimed subject matter cannot be ascertain.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 4 and 5, given the broadest reasonable interpretations, are rejected under 35 U.S.C. 103(a) as being unpatentable over Guenther (6038714).

Regarding claim 1, the Guenther reference discloses a concealed grab bar. The bar includes a bar (Fig. 1) having central portion (at 21) and a pair of integrally formed ends (at 22, 23) bent away from the central portion. The bar

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also includes a mounting flange (at 14, 16) for each of said ends, wherein each of said mounting flanges having a plurality of tabs extending outwardly (the portions that have fasteners 26). The tabs include holes for receiving fasteners (at 26). A separate cover (at 18, 20) disposed at each of the ends to cover or concealed the holes and the fasteners.

Even though the Guenther reference does not specifically disclose that the bar is formed of a hollow thin walled tube material as claimed, it, however, would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the Guenther device by forming the bar using a hollow thin walled tube material. Such modification would be considered a mere choice of a preferred material that (a) is on the basis of its suitability for the intended use and (b) is less expensive to manufacture since it requires less material to make a hollow thin wall bar than that of a solid wall bar.

Furthermore, even though the Guenther device does not specifically show at least three tabs with holes for receiving the fasteners, it, however, would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Guenther reference by employing at least three tabs with holes for receiving the fasteners. Such modification would be considered a mere choice of a preferred mounting configuration (using 3 fasteners instead of 2 fasteners) on the basis of its suitability for the intended use (see cited US 3098240 & US 2455606 as evidence for the use of more than 2 fasteners).

Regarding claim 4, as schematically shown in Figure 1, the bar is cylindrical.

Claim 5 recites limitations that are substantially similar to the limitations recited in claim 1 which has been rejected as discussed supra.

5. Claims 1, 4 and 5, given the broadest reasonable interpretations, are rejected under 35 U.S.C. 103(a) as being unpatentable over Sarkisian (872689) in view of Guenther (6038714).

Regarding claim 1, the Sarkisian reference discloses a support bar. The bar includes a hollow thin wall bar (Fig. 1) having central portion (about a, a') and a pair of ends (at b) bent away from the central portion. The bar also includes a mounting flange (the portion the attached the bar to the wall W) for each of said ends, wherein each of said mounting flanges having a plurality of tabs extending outwardly (at b'). The tabs include holes for receiving fasteners (at 2). A separate cover (at 18, 20) disposed at each of the ends to cover or concealed the holes and the fasteners.

Even though the Sarkisian device includes several parts i.e. the bar with ends (at b), they are secured together as a single unit; constituent parts are so combined as to constitute a unitary whole, which is "integral" within meaning of claim; "integral" is not limited to a fabrication of parts from a single piece of metal, but is inclusive of other means for maintaining parts fixed together as a single unit. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Sarkisian reference by having the

mounting flange formed integrally with the ends of the bar because the use of one piece construction instead of reference structure is matter of obvious engineering choice. *In re Larson*, 144 USPQ 347 (CCPA 1965); *In re Lockart*, 90 USPQ 214 (CCPA 1951).

Furthermore, even though the Sarkisian device does not specifically show at least three tabs as claimed, it, however, would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Sarkisian reference by employing at least three tabs with holes for receiving the fasteners. Such modification would be considered a mere choice of a preferred mounting configuration on the basis of its suitability for the intended use (see cited US 1595564 as evidence of at least three tabs).

The Sarkisian reference also DIFFERS in that it does not specifically include covers as claimed. Attention, however, is directed to the Guenther reference which discloses a similar support bar (Fig. 1) having covers (at 18, 20) for covering the mounting flanges. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Sarkisian reference by employing covers, in view of the teaching of Guenther, to provide an attractive appearance and to conceal from view the fasteners that hold the bar to the wall.

Regarding claim 4, as schematically shown in Figure 1, the tube is cylindrical.

Claim 5 recites limitations that are substantially similar to the limitations recited in claim 1 which has been rejected as discussed supra.

***Response to Amendment***

6. Applicant's amendment, filed on 06/10/05, to the pending claims is insufficient to distinguish the claimed invention from the cited prior art or overcome the rejections as discussed above.

***Response to Arguments***

7. Applicant's arguments filed on 06/10/2005 with respect to the pending claims have been fully considered. However, they are deemed not persuasive.

Applicant asserts that Koering does not meet the claim as amended. See Remarks section, page 14.

Nevertheless, such assertions are now moot in view of the new grounds of rejection under 35 U.S.C. 103(a) as being unpatentable over Guenther and under 35 U.S.C. 103(a) as being unpatentable over Sarkisian (872689) in view of Guenther (6038714) as discussed supra.

Also applicant's arguments with respect to amended claims 1, 4 and 5 have been considered but are moot in view of the new grounds of objection and rejections as discussed above.

***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP



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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoa D. Huynh whose telephone number is (571) 272-4888. The examiner can normally be reached on M-F (7:00-3:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Khoa D. Huynh', with a horizontal line underneath it.

Khoa D. Huynh  
Primary Examiner  
Art Unit 3751

HK  
08/31/2005